# United States Bankruptcy Court
# Central District of California
## San Fernando Valley
## Judge Victoria Kaufman, Presiding
## Courtroom 301 Calendar

**Wednesday, October 6, 2021** **Hearing Room 301**

1:30 PM

**1: -** **Chapter**

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Docket 0

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**CONT...** **Chapter**

**Tentative Ruling:**

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**1:20-11850 Mariyan Khosravizadeh** **Chapter 7**

Adv#: 1:21-01005 US OPPS LLC, an Oregon Limited Liability Company v. Khosravizadeh et

**#1.00** Status conference re: complaint for non-dischargeability of debt 11 U.S.C. § 523(a)(2)(A); (a)(6), and of discharge 11 U.S.C. § 727(a)(2), (4); (a)(3); (a)(4)(A)

fr. 3/24/21; 5/5/21 / 7/7/21; 9/15/21

Docket 1

**Tentative Ruling:**

The Court will set a hearing on the joint motion for approval of the stipulation for dismissal of the section 727(a)(2) and (a)(4) causes of action of the adversary complaint (the "Motion") [doc. 11] at **2:30 p.m. on November 3, 2021**.

No later than **October 8, 2021**, the movants must file and serve notice of the hearing on the U.S. Trustee, the chapter 7 trustee and **all creditors** (the "Notice").

In addition, no later than **October 20, 2021**, the movants must file and serve on the chapter 7 trustee and the U.S. Trustee a response to the opposition to the Motion filed by the chapter 7 trustee [doc. 12].

Among other things, the Notice must include a 14-day deadline by which a party in interest may substitute into this action, and state that, unless there is a substitution, this adversary proceeding may be dismissed.

Appearances on October 6, 2021 are excused.

The Court will prepare the scheduling order.

**5/5/2021 Tentative:**

When do the parties anticipate that they can finalize their settlement agreement?

Given that the complaint includes claims under 11 U.S.C. § 727, if the parties intend

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**CONT... Mariyan Khosravizadeh** **Chapter 7**

to dismiss this adversary proceeding in connection with their settlement agreement, the plaintiff must provide notice in accordance with Federal Rule of Bankruptcy Procedure 7041. After the parties finalize their settlement agreement, the plaintiff must file and serve a notice on the U.S. Trustee, the chapter 7 trustee and all creditors (the "Notice"). The Notice must include a 14-day deadline by which a party in interest may substitute into this action, and inform the parties in interest that, unless there is a substitution, this adversary proceeding will be dismissed. The Court will not dismiss this adversary proceeding unless there is a properly filed and served Notice.

**Party Information**

**Debtor(s):**

| | |
|---|---|
| Mariyan Khosravizadeh | Represented By<br>Stephen L Burton |

**Defendant(s):**

| | |
|---|---|
| Mariyan Khosravizadeh | Pro Se |
| Does 1-100 | Pro Se |

**Plaintiff(s):**

| | |
|---|---|
| US OPPS LLC, an Oregon Limited | Represented By<br>Jason D Ahdoot |

**Trustee(s):**

| | |
|---|---|
| David Keith Gottlieb (TR) | Pro Se |

# United States Bankruptcy Court
# Central District of California
## San Fernando Valley
## Judge Victoria Kaufman, Presiding
## Courtroom 301 Calendar

**Wednesday, October 6, 2021** **Hearing Room 301**

1:30 PM
**1:21-10844 Michael Chulak** **Chapter 7**
Adv#: 1:21-01046 Smith et al v. Chulak

**#2.00** Status conference re: complaint objecting to discharge pursuant to 11 U.S.C. § 727

fr. 9/22/21

Docket 1
***** VACATED *** REASON: Pretrial conference set for 3/23/22 [doc. 9].**

**Tentative Ruling:**

- NONE LISTED -

**Party Information**

**Debtor(s):**

| | |
|---|---|
| Michael Chulak | Represented By<br>Michael R Totaro |

**Defendant(s):**

| | |
|---|---|
| Michael Chulak | Pro Se |

**Plaintiff(s):**

| | |
|---|---|
| Robert Smith | Represented By<br>Stephen M Sanders<br>Scott T Green |
| Hillary Smith | Represented By<br>Stephen M Sanders<br>Scott T Green |
| Natalie Smith | Represented By<br>Stephen M Sanders<br>Scott T Green |

**Trustee(s):**

| | |
|---|---|
| David Seror (TR) | Pro Se |

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**1:20-10346 Alan Gene Lau** **Chapter 7**
Adv#: 1:20-01053 Prior et al v. Lau et al

**#3.00** Pretrial conference re complaint to determine the dischargeability of debt pursuant to 11 U.S.C. sec 523(a)(2)

fr. 7/29/20; 3/10/21; 3/24/21; 6/2/21; 7/28/21; 9/22/21

Docket 1
***** VACATED *** REASON: Continued by stip to 11/10/21 at 1:30 pm - jc**

**Tentative Ruling:**

- NONE LISTED -

**Party Information**

**Debtor(s):**

| | |
|---|---|
| Alan Gene Lau | Represented By<br>Kevin T Simon |

**Defendant(s):**

| | |
|---|---|
| Alan Gene Lau | Pro Se |
| DOES 1 through 10, inclusive | Pro Se |

**Joint Debtor(s):**

| | |
|---|---|
| Amber Ann Waddell Lau | Represented By<br>Kevin T Simon |

**Plaintiff(s):**

| | |
|---|---|
| Russell Prior | Represented By<br>Alana B Anaya |
| Cheryl Prior | Represented By<br>Alana B Anaya |

**Trustee(s):**

| | |
|---|---|
| Amy L Goldman (TR) | Pro Se |

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**1:20-10276 Hormoz Ramy** **Chapter 7**
Adv#: 1:20-01077 Seror v. Ramy

**#4.00** Plaintiff's motion to continue the discovery cutoff and related scheduling deadlines

Docket 20

**Tentative Ruling:**

Grant, to the extent set forth below.

**I. BACKGROUND**

On February 4, 2020, Hormoz Ramy ("Debtor") filed a voluntary chapter 7 petition. David Seror was appointed the chapter 7 trustee (the "Trustee"). On August 31, 2020, the Trustee filed a complaint against Debtor, objecting to Debtor's discharge under 11 U.S.C. § 727(a)(2), (a)(3) and (a)(4).

On November 13, 2020, the Court entered a scheduling order setting February 26, 2021 as the discovery cutoff date, March 31, 2021 as the deadline to file pretrial motions, April 21, 2021 as the deadline to file a pretrial stipulation and May 5, 2021 as the pretrial conference [doc. 8]. On February 22, 2021, the parties submitted a stipulation to extend these deadlines [doc. 15]. On February 26, 2021, the Court entered an order extending the discovery cutoff date to June 1, 2021 and the deadline to file pretrial motions to July 9, 2021; the Court also continued the pretrial conference to August 4, 2021 [doc. 17].

On May 24, 2021, the parties submitted another stipulation to extend deadlines [doc. 20]. On May 26, 2021, the Court entered an order extending the discovery cutoff date to August 31, 2021 and the deadline to file pretrial motions to September 24, 2021; the Court also continued the pretrial conference to October 13, 2021 [doc. 22]. On September 2, 2021, the parties submitted a third stipulation to extend deadlines [doc. 24]. On September 9, 2021, the Court entered an order extending the discovery cutoff date to September 15, 2021 and the deadline to file pretrial motions to December 20, 2021; the Court also continued the pretrial conference to January 12, 2022 [doc. 26].

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**CONT... Hormoz Ramy** **Chapter 7**

On September 14, 2021, the Trustee filed the Motion [doc. 29]. In a declaration attached to the Motion, the Trustee's counsel asserts that Debtor has not responded to the Trustee's request for an accounting or for turnover of documents. Declaration of Tamar Terzian ("Terzian Declaration"), ¶ 5. Counsel also states that the Trustee requested initial disclosures, but received minimal responses, and that the Trustee is waiting for complete responses to 14 subpoenas served on third parties. Terzian Declaration, ¶¶ 7-8. As such, the Trustee requests a 90-day extension of the current dates and deadlines.

On September 22, 2021, Debtor filed an opposition to the Motion (the "Opposition") [doc. 33]. In his declaration opposing the Motion, Debtor's counsel contends that, from September 18, 2020 through March 2021, the Trustee did not conduct any discovery. Declaration of Mac E. Nehoray, ¶ 2. Debtor contends that the Trustee has had ample time to conduct discovery, and that the Court should deny the latest request for extension. On September 29, 2021, the Trustee filed a reply to the Opposition [doc. 34], noting that the Trustee has conducted discovery and needs additional time to assess produced documents, depose third party witnesses and analyze whether to file case dispositive motions.

**II. ANALYSIS**

Pursuant to Federal Rule of Civil Procedure ("Rule") 16(b)(4), as incorporated into this proceeding by Fed. R. Bankr. P. 7016, "[a] schedule may be modified only for good cause and with the judge's consent." "The district court is given broad discretion in supervising the pretrial phase of litigation…." *Johnson v. Mammoth Recreations, Inc.*, 975 F.2d 604, 607 (9th Cir. 1992).

Here, the Trustee has shown good cause for an extension of the deadlines. As explained by the Trustee, having received inadequate discovery responses from Debtor and certain third-party witnesses, the Trustee requires an extension to follow up on a number of subpoenas to third-party witnesses, complete depositions and analyze the significant number of documents produced by Wells Fargo Bank and City National Bank. As such, the Court will grant the Trustee's request for a 90-day extension.

In the Opposition, Debtor mainly notes that the Trustee has had ample time to

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**CONT... Hormoz Ramy** **Chapter 7**

complete discovery. In light of the date on which the Trustee filed the complaint against Debtor, *i.e.*, August 31, 2020, and the number of prior granted extensions, unless the Trustee demonstrates that he could **not** obtain the required discovery within the extended period, e.g., by prosecuting one or more motions to compel in compliance with LBR 7026-1(c), the Court will not grant any future requests by the Trustee for extension of deadlines applicable to this adversary proceeding.

**III. CONCLUSION**

The Court will extend the discovery cutoff date to **December 15, 2021**, the deadline to file pretrial motions to **January 19, 2022** and the deadline to file a pretrial stipulation to **February 23, 2022**. The Court will continue the pretrial conference to **1:30 p.m. on March 9, 2022**.

The Trustee must submit an order within seven (7) days.

**Party Information**

**Debtor(s):**

| | |
|---|---|
| Hormoz Ramy | Represented By<br>Siamak E Nehoray |

**Defendant(s):**

| | |
|---|---|
| Hormoz Ramy | Represented By<br>Siamak E Nehoray |

**Plaintiff(s):**

| | |
|---|---|
| David Seror | Represented By<br>Tamar Terzian |

**Trustee(s):**

| | |
|---|---|
| David Seror (TR) | Represented By<br>Steven T Gubner<br>Jessica L Bagdanov<br>Tamar Terzian |

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**1:20-12097 Philip H. Lee** **Chapter 7**
Adv#: 1:21-01043 KeyBank National Association v. Lee

**#5.00** Defendant's motion to dismiss adversary proceeding

Docket 8

**Tentative Ruling:**

Grant in part and deny in part.

**I. BACKGROUND**

On November 24, 2020, Philip H. Lee ("Debtor") filed a voluntary chapter 7 petition. David K. Gottlieb was appointed the chapter 7 trustee (the "Trustee"). On July 14, 2021, KeyBank National Association ("Plaintiff") filed a complaint against Debtor (the "Complaint"). In the Complaint, Plaintiff alleges—

> On November 28, 2018, a California state court entered a $1.682 million dollar judgment in favor of Plaintiff and against Debtor (the "Judgment"). While Plaintiff was attempting collection on the Judgment, Debtor failed to respond to discovery requests. After Debtor filed his petition, staying the collection action, Debtor filed an amended Official Form 107. In Form 107, Debtor disclosed that his income, from January 1, 2020 to November 20, 2020, was $60,000.00, and that his income for the calendar year 2019 was $80,000.00 [Bankruptcy Docket, doc. 30]. Debtor also attested that, from 2018 to 2020, Debtor did not receive any rental income. Moreover, Debtor stated that he did not sell, trade or otherwise transfer any property to anyone, other than property transferred in the ordinary course of business or financial affairs within two years before filing for bankruptcy.
>
> On December 20, 2020, Debtor filed an amended Official Form 106I, attesting that his income (other than social security payments) was derived solely from ownership of Green Cross Medical Surgical, Inc. ("Green Cross"); Debtor stated that his income from operation of

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**CONT... Philip H. Lee** **Chapter 7**

Green Cross was $5,000 a month [Bankruptcy Docket, doc. 27]. Contrary to the requirements of Form 107, Debtor did not provide a statement showing gross receipts, ordinary and necessary business expenses and the total monthly net income for Green Cross.

On June 30, 2021, Plaintiff conducted a Federal Rule of Bankruptcy Procedure ("Rule") 2004 examination of Debtor. During the Rule 2004 examination, Debtor testified regarding his income and financial transactions reflected in documents produced by Debtor. Debtor testified that, in the two years between entry of the Judgment and the petition date, Debtor conveyed ownership of six two-bedroom, two-bathroom townhouses located in Dallas, Texas to his brother, Stephen Limurti, for the sum of $2.00 (the "Texas Transfer").

Debtor further testified that the Texas Transfer was in satisfaction of a $240,000 loan made by Mr. Limurti to Debtor. Debtor did not produce any documents related to any assessments of the value of the Texas properties. Debtor also refused to produce pay stubs, W2 forms, 1099-MISC or state and federal income tax returns that Plaintiff requested in advance of the Rule 2004 examination (and has not produced such documents to date).

However, Debtor testified during the Rule 2004 examination that he earns approximately $10,000 a month from his company, Green Cross. Debtor also testified that he receives income from house calls he conducts as a doctor, as well as from his role as a medical director at Free Breeze Hospice. Finally, Debtor testified that he lives with three roommates, each of whom pay Debtor $800 a month in rent.

On these allegations, Plaintiff asserts claims for fraudulent transfer and denial of Debtor's discharge under 11 U.S.C. § 727(a)(4)(A) and (a)(4)(D). On August 16, 2020, Defendant filed a motion to dismiss the Complaint (the "Motion") [doc. 8]. On August 22, 2021, Plaintiff filed an opposition to the Motion (the "Opposition") [doc. 17].

**II. ANALYSIS**

***A. General Federal Rule of Civil Procedure ("Rule") 12(b)(6) Standard***

> A motion to dismiss [pursuant to Rule 12(b)(6)] will only be granted if the complaint fails to allege enough facts to state a claim to relief that is plausible on its face. A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged. The plausibility standard is not akin to a probability requirement, but it asks for more than a sheer possibility that a defendant has acted unlawfully.
>
> We accept factual allegations in the complaint as true and construe the pleadings in the light most favorable to the non-moving party. Although factual allegations are taken as true, we do not assume the truth of legal conclusions merely because they are cast in the form of factual allegations. Therefore, conclusory allegations of law and unwarranted inferences are insufficient to defeat a motion to dismiss.

*Fayer v. Vaughn*, 649 F.3d 1061, 1064 (9th Cir. 2011) (internal quotation marks omitted); citing, *inter alia*, *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 547, 127 S.Ct. 1955, 167 L.Ed.2d 929 (2007); and *Ashcroft v. Iqbal*, 556 U.S. 662, 678, 129 S.Ct. 1937, 173 L.Ed.2d 868 (2009)).

In evaluating a Rule 12(b)(6) motion, review is "limited to the contents of the complaint." *Clegg v. Cult Awareness Network,* 18 F.3d 752, 754 (9th Cir. 1994). However, without converting the motion to one for summary judgment, exhibits attached to the complaint, as well as matters of public record, may be considered in determining whether dismissal is proper. *See Parks School of Business, Inc. v. Symington,* 51 F.3d 1480, 1484 (9th Cir. 1995); *Mack v. South Bay Beer Distributors, Inc.,* 798 F.2d 1279, 1282 (9th Cir. 1986).

"A court may [also] consider certain materials—documents attached to the complaint, documents incorporated by reference in the complaint, or matters of judicial notice—without converting the motion to dismiss into a motion for summary judgment." *United States v. Ritchie*, 342 F.3d 903, 908 (9th Cir. 2003). Under the "incorporation

by reference" doctrine, a court may look beyond the four corners of the complaint to take into account documents whose contents are alleged in a complaint, but not physically attached, and may do so without converting a Rule 12(b)(6) motion into a motion for summary judgment. *Davis v. HSBC Bank Nevada, N.A.*, 691 F.3d 1152, 1160 (9th Cir. 2012). The court "may treat the referenced document as part of the complaint, and thus may assume that its contents are true for purposes of a motion to dismiss under Rule 12(b)(6)." *Id*., quoting *United States v. Richie*, 342 F.3d 903, 908 (9th Cir. 2003). State court pleadings, orders and judgments are subject to judicial notice under Federal Rule of Evidence 201. *See McVey v. McVey*, 26 F.Supp.3d 980, 983-84 (C.D. Cal. 2014) (aggregating cases); *and Reyn's Pasta Bella, LLC v. Visa USA, Inc.*, 442 F.3d 742, 746 n.6 (9th Cir. 2006) ("We may take judicial notice of court filings and other matters of public record.").

Pursuant to Rule 9(b), "[i]n alleging fraud or mistake, a party must state with particularity the circumstances constituting fraud or mistake. Malice, intent, knowledge, and other conditions of a person's mind may be alleged generally." Allegations must be "specific enough to give defendants notice of the particular misconduct which is alleged to constitute the fraud charged..." *Neubronner v. Milken*, 6 F.3d 666, 671 (9th Cir. 1993). "[M]ere conclusory allegations of fraud are insufficient." *Moore v. Kayport Package Exp., Inc.*, 885 F.2d 531, 540 (9th Cir. 1989).

***B. Timeliness of the Motion***

In the Opposition, Plaintiff asserts that the Motion was not timely filed. Pursuant to Federal Rule of Bankruptcy Procedure 7012(a), "[i]f a complaint is duly served, the defendant shall serve an answer within 30 days after the issuance of the summons, except when a different time is prescribed by the court." Here, the Court issued the summons on July 14, 2021; the summons notified Debtor that a response was due by August 13, 2021. Although Debtor timely filed the first page of the Motion by August 13, 2021, Debtor did not file the complete Motion until three days later, on August 16, 2021.

Plaintiff asserts that, in accordance with Local Bankruptcy Rule ("LBR") 9013-1(h), the Court should not consider the untimely filing. Under LBR 9013-1(h), "if a party does not timely file and serve documents, the court *may* deem this to be consent to the granting or denial of the motion, as the case may be." (Emphasis added). LBR

9013-1(h) appears to apply to responses to motions, not responses to complaints. Nevertheless, LBR 9013-1(h) is discretionary. Although the memorandum of points and authorities was not timely filed with the first page of the Motion, disregarding the Motion and requiring Debtor to seek relief from the untimely filing will create additional delay and lead to both parties incurring fees and costs. Given that Debtor's notice of the hearing on the Motion provided ample opportunity for Plaintiff to timely file an opposition, and because of the insignificant delay in the filing of the memorandum of points and authorities, the Court will consider the merits of the Motion.

***C. Fraudulent Transfers***

Under 11 U.S.C. § 548(a)(1), a "trustee may avoid any transfer of an interest of the debtor in property, or any obligation … incurred by the debtor, that was made or incurred on or within 2 years before the date of the filing of the petition, if the debtor voluntarily or involuntarily—

(A) made such transfer or incurred such obligation with actual intent to hinder, delay, or defraud any entity to which the debtor was or became, on or after the date that such transfer was made or such obligation was incurred, indebted; or

(B) (i) received less than a reasonably equivalent value in exchange for such transfer or obligation; and

(ii)(I) was insolvent on the date that such transfer was made or such obligation was incurred, or became insolvent as a result of such transfer or obligation …"

11 U.S.C. § 548(a)(1).

Similarly, under California's Uniform Fraudulent Transfer Act, an unsecured creditor may void a transfer made by a debtor, not later than four years after the transfer was made, if the debtor made the transfer as follows:

(1) With actual intent to hinder, delay, or defraud any creditor of the debtor.

(2) Without receiving a reasonably equivalent value in exchange for the transfer or obligation, and the debtor either:

(A) Was engaged or was about to engage in a business or a transaction for which the remaining assets of the debtor were unreasonably small in relation to the business or transaction.

(B) Intended to incur, or believed or reasonably should have believed that the debtor would incur, debts beyond the debtor's ability to pay as they became due.

Cal. Civ. Code § 3439.04(a).

Here, Debtor argues that the Texas Transfer does not qualify as a fraudulent transfer because Debtor transferred the Texas properties to his brother to pay off an antecedent debt. However, in the Complaint, Plaintiff alleges that Debtor did not receive reasonably equivalent value in return for the Texas Transfer. Thus, even if the Texas Transfer was meant to pay an antecedent debt to Debtor's brother, the Texas Transfer would not be shielded from recovery if the properties were worth more than the alleged amount of the debt.

Debtor also argues that Plaintiff did not adequately allege fraudulent intent. Pursuant to Rule 9(b), in alleging fraud, "intent, knowledge, and other conditions of a person's mind may be alleged generally." In the Complaint, Plaintiff generally alleges that Debtor acted with the requisite fraudulent intent. At this Rule 12(b)(6) stage, these allegations are sufficient.

Next, Debtor asserts that Plaintiff failed to allege how Plaintiff was damaged by the alleged Texas Transfer. However, in the Complaint, Plaintiff explicitly alleges that, after it obtained the Judgment against Debtor, Debtor transferred his real properties to his brother to hinder collection efforts by Plaintiff and/or other creditors. Debtor further argues that creditors were not injured because the Texas Transfer did not place the properties beyond the reach of Debtor's creditors. Debtor does not provide any support for this statement. Given that Plaintiff alleges that, as a result of the Texas Transfer, Debtor no longer has title to the properties, it is unclear how Debtor's

creditors may reach the properties for satisfaction of debts owed to them.

Nevertheless, as noted by Debtor, Plaintiff has failed to allege how *Debtor*, as opposed to the transferee (Debtor's brother) is liable for the alleged fraudulent transfer. As explained by the Bankruptcy Appellate Panel of the Ninth Circuit—

> The flaw in [the plaintiff's] approach is that, generally and under California law, a creditor's remedies for fraudulent transfer are avoidance of the transfer to the extent necessary to satisfy the creditor's claim, attachment of the asset transferred, and equitable (injunction against further transfer of the asset transferred, or appointment of a receiver). Where, as here, the creditor has a judgment against the transferor, he may also execute against the asset transferred or its proceeds. How these remedies raise a right to payment *from the transferors,* here the debtors, is not clear. Appellant, having not addressed the question, has not cited any authority, nor have we found any.

*In re Saylor*, 178 B.R. 209, 213–14 (B.A.P. 9th Cir. 1995), *aff'd,* 108 F.3d 219 (9th Cir. 1997) (emphasis in *Saylor*).

In the Complaint, Plaintiff requests recovery of the properties into the estate. However, as alleged by Plaintiff itself, Debtor does not have title to the properties. As such, to accomplish such recovery, the proper party in interest against which to assert Plaintiff's claim would be the alleged transferee, i.e., Debtor's brother. Plaintiff has not otherwise alleged any damages or relief applicable to *Debtor*. As such, the Court will dismiss this claim with leave to amend.

***D. 11. U.S.C. § 727(a)(4)(A)***

Pursuant to 11 U.S.C. § 727(a)(4)(A), the court shall not grant a debtor a discharge if "the debtor knowingly and fraudulently, in or in connection with the case—made a false oath or account." 11 U.S.C. § 727(a)(4)(A). "The fundamental purpose of § 727(a)(4)(A) is to insure that the trustee and creditors have accurate information without having to conduct costly investigations." *In re Retz*, 606 F.3d 1189, 1196 (9th Cir. 2010) (internal quotations and citation omitted). To prevail on a claim under §

727(a)(4)(A), the plaintiff must show that: (1) the debtor made a false oath in connection with the case; (2) the oath related to a material fact; (3) the oath was made knowingly; and (4) the oath was made fraudulently. *Id*., at 1197.

Here, accepting the factual allegations in the Complaint as true and construing the pleadings in the light most favorable to the nonmoving party, Plaintiff has alleged adequate facts to state a claim under § 727(a)(4)(A). First, Plaintiff alleges that Debtor made several false oaths and omissions, including that Debtor: (A) falsely stated his income in his schedules and statements, which income was contradicted by Debtor's testimony at the Rule 2004 examination; (B) omitted the Texas Transfer from his schedules and statements; (C) omitted the requisite receipts and statements regarding Green Cross from Form 107; and (D) did not disclose rental income received by his roommates.

Next, the alleged false oaths and omissions are material. In the Motion, Debtor argues, in a conclusory fashion, that the oaths and omissions were not material. "A false statement is material if it bears a relationship to the debtor's business transactions or estate, or concerns the discovery of assets, business dealings, or the existence and disposition of the debtor's property." *In re Wills*, 243 B.R. 58, 62 (B.A.P. 9th Cir. 1999); s*ee also In re Guadarrama*, 284 B.R. 463, 473 (C.D. Cal. 2002) ("A false statement or omission is material if it concerns information that would aid in understanding the debtor's financial affairs."). Here, the allegedly understated income and the failure to disclose transfers of real property concern the discovery of assets and business dealings. As such, under the broad standard of materiality set forth in the authorities above, the alleged false oaths and omissions are material.

Further, Plaintiff adequately alleged that Debtor acted knowingly and fraudulently. Pursuant to Rule 9(b), "[m]alice, intent, knowledge, and other conditions of a person's mind may be alleged generally." In the Complaint, Plaintiff generally alleges that Debtor acted knowingly and fraudulently. At this stage, these allegations regarding intent are sufficient.

In the Motion, Debtor repeatedly asserts that Plaintiff failed to carry its burden of proving its claims under 11 U.S.C. § 727. However, at this stage, the burden of proof is irrelevant. The Court is assessing the adequacy of allegations under Rule 12(b)(6), not taking evidence to prove a claim. Thus, the Court will not dismiss Plaintiff's

claim under § 727(a)(4)(A).

***E. 11. U.S.C. § 727(a)(4)(D)***

Pursuant to 11 U.S.C. § 727(a)(4)(D), the court shall not grant a debtor a discharge if the debtor "knowingly and fraudulently, in or in connection with the case—withheld from an officer of the estate entitled to possession under this title, any recorded information, including books, documents, records, and papers relating to the debtor's property or financial affairs."

Here, the Complaint includes adequate allegations regarding Debtor's alleged withholding of information, such as the omission of the gross receipts, business expenses and monthly net income of Green Cross and the failure to provide pay stubs, W2 forms and other tax returns. In the Motion, Debtor does not specifically articulate why he believes Plaintiff's claim under 11 U.S.C. § 727(a)(4)(D) is deficient. Nevertheless, in the background section of the Motion, Debtor asserts that, with respect to tax forms, the documents were privileged under federal and state law.

"Where there are federal question claims and pendent state law claims present, the federal law of privilege applies." *Agster v. Maricopa County*, 422 F.3d 836, 839 (9th Cir. 2005). Here, although Plaintiff has asserted a claim under California's Uniform Fraudulent Transfer Act, Plaintiff also has asserted federal claims under 11 U.S.C. § 727. Consequently, the federal law on privileges applies. Although Debtor asserts that federal privileges also protect Debtor's tax returns from production, Debtor exclusively cites California law on the issue. Pursuant to federal law, tax returns are not privileged. *Hernandez v. Yon Hoon* Cho, 867 F.2d 613 (9th Cir. 1989) (citing *Heathman v. United States District Court,* 503 F.2d 1032, 1034–35 (9th Cir.1974)). In addition, "[d]ebtors who have filed for bankruptcy relief must have a significantly reduced expectation of privacy in their houses, papers, and effects that society is prepared to recognize as reasonable. The reduced expectation of privacy is a natural consequence of the substantial and detailed disclosures that are inherent in the bankruptcy process." *In re Kerlo*, 311 B.R. 256, 266 (Bankr. C.D. Cal. 2004) (quoting *In re Barman*, 252 B.R. 403, 414 (Bankr. E.D. Mich. 2000)). In light of these authorities, Debtor's tax papers are not privileged and, as a debtor in bankruptcy, Debtor has a reduced expectation of privacy in these documents. As such, the Court will not dismiss this claim.

***F. Debtor's Requests under Rules 12(e) and 12(f)***

As discussed above, the Court is dismissing Plaintiff's fraudulent transfer claim. As such, Plaintiff's request to strike this claim, under Rule 12(f), is moot.

Debtor also requests an order requiring Plaintiff to provide, in accordance with Rule 12(e), a more definite statement. A motion under Rule 12(e) "must be made before filing a responsive pleading and must point out the defects complained of and the details desired." Here, Debtor did not file a motion for a more definite statement *before* filing a responding pleading, i.e., the Motion. Consequently, the Court will deny Debtor's request for relief under Rule 12(e).

Finally, Debtor has not stated a legitimate basis for recovery of attorneys' fees. First, the authorities referenced by Debtor in support of his request for fees are inapposite; those authorities relate to a creditor's violation of the discharge injunction. Debtor has not set forth any authorities entitling parties who prevail in fraudulent transfer or denial of discharge litigation to attorneys' fees and costs. In addition, Debtor is not a prevailing party. The Court is not dismissing two out of three claims asserted by Plaintiff.

**III. CONCLUSION**

The Court will dismiss, with leave to amend, Plaintiff's fraudulent transfer claim. The Court will otherwise deny the Motion. If Plaintiff elects to file an amended complaint, Plaintiff must file and serve an amended complaint **no later than October 20, 2021**. If Plaintiff files an amended complaint, Debtor must file and serve a response **no later than November 3, 2021**. If Plaintiff elects to proceed with the Complaint, Plaintiff must file a notice of such intent **no later than October 20, 2021**. If Plaintiff files a notice to proceed with the Complaint, Debtor must file his answer **no later than November 3, 2021**.

Plaintiff must submit an order within seven (7) days.

**Party Information**

**Debtor(s):**

Philip H. Lee Represented By

2:30 PM
**CONT... Philip H. Lee** **Chapter 7**

Matthew Abbasi

**Defendant(s):**

| | |
|---|---|
| Philip H. Lee | Represented By<br>Matthew Abbasi |

**Plaintiff(s):**

| | |
|---|---|
| KeyBank National Association | Represented By<br>Jason E Murtagh<br>Natalie Peled |

**Trustee(s):**

| | |
|---|---|
| David Keith Gottlieb (TR) | Pro Se |

# United States Bankruptcy Court
# Central District of California
## San Fernando Valley
## Judge Victoria Kaufman, Presiding
## Courtroom 301 Calendar

**Wednesday, October 6, 2021** **Hearing Room 301**

2:30 PM
**1:20-12097 Philip H. Lee** **Chapter 7**
Adv#: 1:21-01043 KeyBank National Association v. Lee

**#6.00** Status conference re: complaint objecting to entry of discharge pusuant to 11 U.S.C. §§ 544, 548, 727(A)(4)(A), 727(A)(4)(D) and California Civil Code § 3439 et seq.

fr. 9/15/21

Docket 1

**Tentative Ruling:**

Continue status conference to **1:30 p.m. on December 8, 2021.** The parties must file a joint status report no later than **November 24, 2021**.

The plaintiff must file a scheduling order within seven (7) days.

**Party Information**

**Debtor(s):**

| | |
|---|---|
| Philip H. Lee | Represented By<br>Matthew Abbasi |

**Defendant(s):**

| | |
|---|---|
| Philip H. Lee | Pro Se |

**Plaintiff(s):**

| | |
|---|---|
| KeyBank National Association | Represented By<br>Jason E Murtagh<br>Natalie Peled |

**Trustee(s):**

| | |
|---|---|
| David Keith Gottlieb (TR) | Pro Se |